

# Exhibit 1

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

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STRAUSS, *et al.*, :  
:  
Plaintiffs, : 06-CV-00702 (DLI)  
:  
v. :  
:  
CREDIT LYONNAIS, S.A., : 225 Cadman Plaza East  
:  
Defendant. : Brooklyn, New York  
:  
October 16, 2017  
-----X

WOLF, *et al.*, :  
:  
Plaintiffs, :  
:  
v. : 07-CV-00914 (DLI)  
:  
CREDIT LYONNAIS, S.A., :  
:  
Defendant. :  
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TRANSCRIPT OF CIVIL CAUSE FOR TELEPHONE CONFERENCE  
BEFORE THE HONORABLE ROBERT M. LEVY  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

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(Appearances continue on next page.)

Proceedings recorded by electronic sound recording, transcript  
produced by transcription service.

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3 APPEARANCES CONTINUED:

4

For the Defendants: LAWRENCE FRIEDMAN, ESQ.  
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1 (Proceedings began at 1:35 p.m.)

2 THE COURT: Good afternoon. This is Judge Levy.  
3 We're on the record now. This is Docket 07-CV-914, Wolf, et  
4 al. v. Credit Lyonnais.

5 Will counsel please state their appearances for the  
6 record? Hi, can everybody hear me?

7 MR. TURNER: Yes, sir.

8 MR. FRIEDMAN: Yes, we can, Your Honor.

9 THE COURT: Good. We're on the record. This is  
10 Docket No. 07-CV-914, Wolf, et al. v. Credit Lyonnais.

11 Could counsel please state their appearances for the  
12 record?

13 MR. TURNER: This is Tab Turner for the plaintiffs.

14 MR. WERKNER: Mark Werkner for other plaintiffs in  
15 the related case.

16 THE COURT: And for defendants.

17 MR. NAUNTON: Shawn Naunton of Zuckerman Spaeder for  
18 plaintiffs.

19 MR. UNGAR: Ari Ungar and Michael Radine for the  
20 Strauss plaintiffs.

21 MR. STEINGARD: Steven Steingard for the Wolf  
22 plaintiffs.

23 MR. FRIEDMAN: This is Lawrence Friedman, Jonathan  
24 Blackman, Mark McDonald for Credit Lyonnais.

25 THE COURT: For the record, the Strauss case is 07-

1 CV-914 and the Wolf case is 06-CV-702.

2 So I'm going to ask plaintiff's counsel first to  
3 tell me what you think the best way to manage the case from  
4 here on is what needs to be done and what we should do.

5 MR. TURNER: Your Honor, we've had an opportunity --  
6 this is Tab Turner on behalf of the plaintiffs, and we've had  
7 an opportunity to confer with the Mr. Friedman and I think we  
8 both concluded that the next step in the process is to prepare  
9 the pretrial order consistent with Judge Irizarry's  
10 requirements. I believe Mr. Friedman requested that we have  
11 that done in the next 60 days and we had no objection to Mr.  
12 Friedman's need for 60 days.

13 Then in the interim I believe Mr. Friedman -- I'll  
14 let him speak for himself -- had some issues or questions for  
15 clarification purposes with respect to some of Judge  
16 Irizarry's requirements.

17 MR. FRIEDMAN: Your Honor, Mr. Turner is correct  
18 that we do agree the next step is the preparation of the joint  
19 pretrial order in compliance with Judge Irizarry's rules and  
20 we do request that we have 60 days. I believe that's until  
21 December 15th to submit that.

22 Mr. Turner's colleagues and I will work out in the  
23 interim dates that need to be established for the exchanges of  
24 witness lists, exhibit lists and the like as called for by  
25 Chief Judge Irizarry's rules so that we'll all be ready with a

1 complete package by December 15th.

2 Now, with respect to Mr. Turner's last point, there  
3 are three points of clarification that we need concerning  
4 Chief Judge Irizarry's rules. There are three elements of  
5 what she lists to be included in the joint pretrial order  
6 about which we have very short questions and of course I will  
7 take Your Honor's guidance as to how I might pose those  
8 questions and get whatever answers we can because that will  
9 help us to expedite the completion of the pretrial order.

10 THE COURT: What are your questions?

11 MR. FRIEDMAN: There are three, Your Honor. Number  
12 one, I assume with respect to Item 8 in Chief Judge Irizarry's  
13 listing where it calls for us to list the case in chief and  
14 impeachment exhibits. I assume that the Court will want us to  
15 separately label our case in chief and impeachment exhibits  
16 but I just wanted to check on that.

17 Number two, with respect to deposition designations,  
18 I'm unclear -- also in Chief Judge Irizarry's listing I'm  
19 unclear as to how Her Honor wishes us to proceed with that. I  
20 assume that the proponent offering deposition testimony would  
21 designate the excerpts for that party's case in chief but I'm  
22 not sure if Her Honor wishes us to list the impeachment  
23 designations and how we would go about doing that in light of  
24 the fact that we don't know what witnesses we'd be impeaching  
25 the deposition designations would [inaudible].

1           Then finally, Item 9 in Chief Judge Irizarry's list  
2 addresses motions in limine. I'm unclear as to whether the  
3 Court wishes us to actually submit the motions as part of the  
4 joint pretrial order or instead as I understand from prior  
5 practice with Chief Judge Irizarry but I need to confirm that  
6 the parties just list the topics of the motions in limine that  
7 they propose to submit. Those are my three questions.

8           THE COURT: I'm sorry. List the topics or have a  
9 brief summary of them or what would the alternative be do you  
10 think that would be reasonable?

11           MR. FRIEDMAN: Your Honor, it could be a list with a  
12 brief summary of the motion or the actual brief in support of  
13 the motion in limine. I just -- I think the parties would be  
14 helped to know which Chief Judge Irizarry desires. Again, my  
15 understanding speaking for petitioners submitted these orders  
16 to Chief Judge Irizarry that she desires a list, perhaps a  
17 summary as well but I just would be grateful for the Court's  
18 guidance on that.

19           THE COURT: Okay. Well, it probably makes more  
20 sense for you to contact her chambers on those issues. Hold  
21 on just a minute. Why don't I put you on hold for just a  
22 second? See if I can get some clarification.

23 (Off the record at 1:42 p.m.)

24 (Back on the record at 1:50 p.m.)

25           THE COURT: This is Judge Levy. I'm back and I have

1 clarifications on each point.

2           So as to the questions about exhibits and  
3 depositions testimony as to impeachment, identification of  
4 impeachment, I think if you -- what Judge Irizarry said, if  
5 you simply say depending on the context and what transpires at  
6 trial documents that have not been identified or deposition  
7 excerpts that have not been identified may be introduced as  
8 impeachment. That's all you need to do.

9           MR. FRIEDMAN: Thank you.

10           THE COURT: And on the last the motions in limine,  
11 here's the principle and then the reason behind it. The  
12 principle is that she needs to know -- she doesn't want you to  
13 do unnecessary work but at the same time she wants to have  
14 enough information so she can decide whether the motion has to  
15 be briefed or whether she can decide it based on what you  
16 submitted to her.

17           So in listing the motions in limine what you need to  
18 do is to provide a sufficient summary so that she can make  
19 that determination.

20           MR. FRIEDMAN: Understood.

21           THE COURT: So that would mean -- and I'm sure you  
22 understand this but, for example, if the objection is as to  
23 Rule 903, whatever, don't just cite to the rule but explain  
24 why.

25           MR. FRIEDMAN: Understood, Your Honor. Thank you.



1 THE COURT: Does that help or do you need more  
2 clarification?

3 MR. FRIEDMAN: That's all I need. Thank you very  
4 much.

5 THE COURT: Okay. So is all that we need to do then  
6 is to say that the joint pretrial order should be filed by the  
7 15th of December or is there anything else we need to do?

8 MR. FRIEDMAN: I think that's correct, Your Honor,  
9 just to list the due date for the joint pretrial order and I  
10 will speak with plaintiff's counsel to make sure that we make  
11 our exchanges on a timetable that allows us to meet that  
12 deadline.

13 THE COURT: Is there anything else substantively  
14 that relates to the trial or trial preparation at this time?

15 MR. TURNER: Judge, this is Tab Turner. There is  
16 one issue that we might be able to address while we're on the  
17 phone today because we do have the sister case involving that  
18 list. It involves the same plaintiffs. We received today  
19 from you a scheduling order and I don't recall the specific  
20 date. I think it was around the 26th or the 27th you asked  
21 for an in person hearing. Mr. Friedman were talking about  
22 that on the telephone earlier today as well and I believe he  
23 indicated he had a problem with that time. I thought maybe  
24 just out of pure efficiency we might address scheduling of  
25 that while we're all on the phone together.

1           THE COURT: Sure. That's fine. That would be great  
2 for all of us. Last week was a busy week so perhaps wasn't  
3 thinking as strategically as I should have. So thank you for  
4 bringing that up.

5           MR. FRIEDMAN: Your Honor, this is Mr. Friedman  
6 again. I unfortunately I'll be out of the country on the  
7 27th. So subject to Your Honor's schedule I have availability  
8 the following week, not Monday the 30th but from the 31st  
9 throughout I have substantial time depending on Your Honor's  
10 and my colleague's availability.

11          THE COURT: Well, was the suggestion that we could  
12 do some of that now? Is everybody on the line who needs to be  
13 on that conference or are there other parties?

14          MR. TURNER: I think so. I think everybody is on  
15 the line. We could -- as far as I'm concerned -- again, this  
16 is Mr. Turner. As far as I'm concerned we can go ahead and  
17 knock it out now. We're basically going to cover the same  
18 thing.

19          THE COURT: What's the docket number so we can put  
20 that on the record?

21          MR. TURNER: The docket numbers of the two cases are  
22 05-CV-04622 and 07-CV-01774.

23          THE COURT: Okay. So what do you propose?

24          MR. TURNER: I'm sorry, Your Honor. The third  
25 one -- it should only be the two cases. It's 05-CV-04622 and

1 07-CV-01775.

2 THE COURT: Five, okay. Great. So what's your --  
3 have you reached an agreement on what should be done in that  
4 case as well, those cases?

5 MR. TURNER: Your Honor, this is Mr. Turner. We  
6 have not had an opportunity to discuss those specifically but  
7 I would suggest that we basically follow the same architecture  
8 that we've already, the 60 days, and we'll meet together and  
9 work together and cooperate in putting together a pretrial  
10 order for that date as well.

11 MR. FRIEDMAN: Your Honor, I think we should have a  
12 conference because we on this side couldn't do that and -- but  
13 that's not necessary because the plaintiffs have said for  
14 years in these cases that they wish to try the Credit Lyonnais  
15 cases first and the NatWest cases second. They asked the  
16 judge earlier this year to consolidate these two cases for  
17 trial and the judge declined to do that. We're just not going  
18 to be able to prepare the pretrial order for both cases at the  
19 same time. These are very substantial cases as Your Honor  
20 knows and we just can't do the two together.

21 So I suggest that we have a conference to discuss  
22 that and perhaps Mr. Turner and his colleagues and I can speak  
23 in the interim to see if we can reach an agreement with  
24 respect to that.

25 THE COURT: Mr. Turner.

1 MR. TURNER: For plaintiffs, Your Honor, this is Mr.  
2 Turner. I don't know where Mr. Friedman is getting that a  
3 decision has been made on the part of the plaintiffs that they  
4 wanted the Credit Lyonnais case to go before the NatWest case.  
5 That may be a conversation that I was not privy to but I can  
6 tell you that at least from the conversations that I've been  
7 involved with there's been no decision made as to whether the  
8 NatWest case goes first or the Credit Lyonnais case goes  
9 first. I don't know that the Court has made that decision.

10 And secondly, with respect to the pretrial order  
11 itself, getting together and deciding upon what dates might  
12 work with respect to the NatWest case is not a complicated  
13 procedure and the plaintiff is willing to both of them within  
14 the next 60 days. Both Credit Lyonnais and NatWest.

15 MR. FRIEDMAN: Your Honor, if I may. I can make a  
16 submission to the Court. There's been multiple conferences  
17 before Chief Judge Irizarry and your predecessor, Magistrate  
18 Judge Go, and multiple written submissions in which the  
19 plaintiffs have made clear that plaintiffs intend to try to  
20 the Credit Lyonnais case first and the NatWest case second. I  
21 don't think Mr. Turner was at any of those appearances but I  
22 can represent that's what has always been said and that's the  
23 basis on which we've been proceeding.

24 THE COURT: Well, I'm the newcomer on this case but  
25 what seems clear to me is that you're not going to try them

1 all together at this point unless Judge Irizarry has  
2 consolidated them which I don't think she has.

3 As chief judge she has a lot of responsibilities in  
4 addition to her regular workload and my guess is that if she  
5 hasn't told you already that she's going to try them all  
6 together she probably is not going to.

7 MR. FRIEDMAN: Your Honor, it's just the opposite.  
8 When we were last before Chief Judge Irizarry it was for oral  
9 argument on the plaintiff's motion to consolidate the cases  
10 for trial which the judge denied in a subsequent written  
11 decision.

12 THE COURT: Well, I can just split it up. Does  
13 everyone agree -- Mr. Turner, do you disagree then that Judge  
14 Irizarry made that decision?

15 MR. TURNER: No, we don't disagree at all. We did  
16 ask that they be consolidated and for reasons set forth in her  
17 order she decided that she wanted to try them separately but I  
18 don't recall that Judge Irizarry specifically said in her  
19 order that she was going to go in a particular order in terms  
20 of [inaudible]. I think that's -- it yet has been undecided  
21 by Judge Irizarry and so consequently all I'm simply  
22 suggesting is that the parties can very easily do both  
23 pretrial orders within the next 60 days and the judge can  
24 decide what order she wants to go in.

25 MR. FRIEDMAN: Well, Your Honor, perhaps I should

1 submit the transcript of the hearing before Chief Judge  
2 Irizarry on plaintiff's consolidation motion. Mr. Turner,  
3 with respect, was not present but plaintiff's counsel which  
4 there are several on the phone were there and have said this  
5 to me and to the Court many times that the plaintiffs want to  
6 try the Credit Lyonnais case first and Judge Irizarry  
7 expressly as I recall on the transcript discussed the sequence  
8 that the Credit Lyonnais case would go first and the NatWest  
9 case would go second.

10           While I appreciate Mr. Turner saying that his side  
11 can prepare both pretrial orders at the same time I am quite  
12 confident, Your Honor, that we cannot do that. We need 60  
13 days that I propose to prepare the Credit Lyonnais pretrial  
14 order. We cannot prepare the pretrial order in the NatWest  
15 case at the same time.

16           THE COURT: Do you know what the date was when Judge  
17 Irizarry said which case she would try first or did she not  
18 expressly say that?

19           MR. FRIEDMAN: Tab, I can submit the transcript to  
20 Judge Levy. It was an oral argument earlier this year in  
21 which your client -- your colleagues repeated and I'm kind of  
22 surprised you're saying this although you were not present at  
23 that hearing. Your colleagues have repeatedly said over the  
24 years that they wish to try the Credit Lyonnais case first and  
25 it's been said expressly during that oral argument and Judge

1 Irizarry discussed the subject. Why don't I submit the  
2 transcript of that argument to the Court?

3 MR. TURNER: Judge, this is Mr. Turner. I'm not  
4 disputing something that occurred that I was not present for.  
5 I'm simply telling you I was in fact present despite what Mr.  
6 Friedman says for the motion to consolidate and I don't recall  
7 although I didn't memorize the transcript obviously. I don't  
8 recall the topic of which case goes first coming up in that  
9 hearing at all.

10 So all I'm simply saying is that at least from the  
11 plaintiff's side which case goes first is up to Judge Irizarry  
12 and it really matters not as we're sitting here on the  
13 telephone who's right or who's wrong about that what somebody  
14 might have said three years ago. What's important is trying  
15 to get a schedule in place for both of these cases so we have  
16 in place something that Judge Irizarry can decide upon when  
17 she decides which case she wants to go first.

18 As a consequence all I'm simply suggesting is that  
19 we also get a pretrial order in both cases within the next 60  
20 days. If Mr. Friedman and his lawyers in his firm is  
21 incapable of doing that in the next 60 days then we can extend  
22 it out to 90 days and just have both of them submitted in 90  
23 days.

24 MR. FRIEDMAN: Your Honor, I'm concerned Mr. Turner  
25 has many colleagues who are on the line who have discussed the

1 subject with me literally for years and have repeatedly told  
2 me and told the Court they wish to try the Credit Lyonnais  
3 case first. I propose that the -- I submit the transcript and  
4 I submit the other indications in the record that plaintiffs  
5 have made clear they want to try the Credit Lyonnais case  
6 first and that's the basis on which they have been proceeding.

7 I'm concerned that if there's any change of course  
8 now, and I don't hear that from any plaintiff's counsel other  
9 than Mr. Turner that -- I don't know if this is a strategy to  
10 disrupt us in some way but it's always been understood and as  
11 I said it's been said to the Court that Credit Lyonnais would  
12 be tried first.

13 What I propose to do is to submit that transcript.  
14 I can circulate it to all plaintiff's counsel and we can have  
15 our conference before Your Honor and we can discuss the  
16 subject.

17 As to Mr. Turner's reference about timing, again I  
18 represent to the Court that I need the full 60 days that we've  
19 agreed to for the Credit Lyonnais cases to prepare a pretrial  
20 order there and I just cannot prepare the pretrial order for  
21 both at the same time.

22 THE COURT: Well, this is Judge Levy. Here's what  
23 seems to me the reasonable way to deal with this. I think it  
24 does make sense to give 60 days to prepare each of the joint  
25 pretrial orders. I think it also makes sense to sequence



1 them. So we're going to select a sequence today and I'll  
2 check with Judge Irizarry and if she prefers to switch it then  
3 we'll -- then I'll let you know within 24 hours whether or not  
4 we're switching the order.

5 So the first joint pretrial order will be due on  
6 December 15th and because we started off with the Credit  
7 Lyonnais we'll just assume that's the one. Then -- since no  
8 one particularly -- I haven't heard any objection to that.

9 Then the second joint pretrial order will be due  
10 approximately February -- what would that be, the 12th, the  
11 15th, somewhere around there? I don't think I need to put  
12 everyone to the effort of reviewing transcripts and spending  
13 more time. I'd rather have you spend time getting ready for  
14 the case than arguing about time and details.

15 So February -- why not just say February 15th. Does  
16 that work as far as timing goes? Does that work for everyone?

17 MR. TURNER: That's fine from the plaintiff's  
18 perspective.

19 MR. FRIEDMAN: Yes, it's fine for us, Your Honor.

20 THE COURT: So we'll assume that the Credit Lyonnais  
21 case will go first unless Judge Irizarry tells me otherwise  
22 and I'll let you know within 24 hours.

23 The next question --

24 MR. TURNER: That sounds fair.

25 MR. FRIEDMAN: Yes, Your Honor.

1           THE COURT: So the next question really is -- I  
2 think I'm getting a sense of it from your discussions but have  
3 you been exploring settlement? We can go off the record if  
4 you want.

5           MR. TURNER: No, we can -- Your Honor, this is Tab  
6 Turner again for the plaintiffs. The case has been mediated a  
7 couple of different times and from the plaintiff's perspective  
8 we don't believe that mediation at this point in time would be  
9 beneficial. We're always willing to entertain discussions  
10 about settlement, informal discussions and entertain offers if  
11 any offers are made but I think at this point in time at least  
12 from our perspective our clients are not interested in having  
13 another mediation.

14          THE COURT: Again, I don't want to probe beyond  
15 where I should but is it -- would a settlement in this case be  
16 purely financial and is it just the issue is that you haven't  
17 been able to agree on such a settlement or is it more  
18 complicated than that?

19          MR. TURNER: I think it's fair enough to say it's  
20 relatively simple. It's just a question of desire and  
21 dollars.

22          THE COURT: Do defendants feel that it would be  
23 worthwhile pursuing settlement at this point or do you share  
24 the plaintiff's view?

25          MR. FRIEDMAN: Well, Your Honor, let me just make a

1 couple of things clear. I'm not sure what Mr. Turner means by  
2 mediation but there's never been a formal mediation in these  
3 cases. Judge, Magistrate Judge Go called us in at Chief Judge  
4 Irizarry's request several times but that's as far as it's  
5 gone.

6 As for the Credit Lyonnais cases, the ball is in  
7 plaintiff's court to make a demand. Magistrate Judge Go the  
8 last time we met with her asked the plaintiffs to make a  
9 demand in the Credit Lyonnais cases and plaintiffs as is their  
10 right declined to do so.

11 In the NatWest cases, plaintiff's did make a demand  
12 which NatWest rejected without making a counter given the  
13 nature of the demand that was made and if Your Honor wishes I  
14 can go into what it was about the nature of the demand that  
15 led NatWest to reject it without a counterclaim.

16 THE COURT: I think we should go off the record if  
17 we're going to do that.

18 (Proceedings concluded at 2:07 p.m.)

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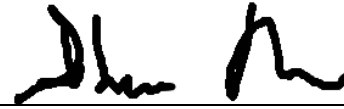
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1 I certify that the foregoing is a court transcript from  
2 an electronic sound recording of the proceedings in the above-  
3 entitled matter.

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6 Shari Riemer, CET-805

7 Dated: October 19, 2017  
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